

UNREPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 416/2001

RASHMI JOSHI & ORS Appellants
Through: Mr. Nitinjya Chaudhary,
Advocate.

versus

GANPAT @ BUNTI & ORS Respondents
Through: Mr. Pankaj Seth, Advocate for the
respondent No.3-Insurance Company.

% Date of Decision : September 26, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT (ORAL)

: REVA KHETRAPAL, J.

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 10.04.2001 passed by the Motor Accident Claims Tribunal, Delhi in Suit No.909/99 (Old Suit No. 296/1997), awarding a sum of ₹ 7,35,000/- with interest at the rate of

9% per annum from the date of the filing of the petition till its realization in favour of the appellants and against the respondents, as compensation for the death of one Sh. Praveen Joshi due to the injuries sustained by him in a road accident.

2. The appellants, who are the legal representatives of the deceased, Sh. Praveen Joshi are aggrieved by the fact that an award in the sum of ₹ 7,35,000/- with interest thereon has been passed as against the compensation of ₹ 80,00,000/- claimed by them in their claim petition filed on 03.05.1997 under Sections 166 and 140 of the Motor Vehicles Act, 1988.

3. Mr. Nitinjya Chaudhary, the learned counsel for the appellants, has assailed the award principally on the following four grounds:-

- (i) The deceased at the time of his death was a practising lawyer dealing in sales-tax and income-tax matters and was earning ₹ 2,00,000/- per annum, having a well established practice. The learned Tribunal, therefore, erred in assessing the average annual income of the deceased to be in

the sum of ₹ 90,000/- per annum only;

- (ii) The learned Tribunal, keeping in view the fact that the deceased was survived by five legal representatives being his widow, three minor children and mother, ought to have deducted not more than one-fourth of the income of the deceased towards his personal expenses. Instead, the Tribunal deducted one-third of the income of the deceased for his personal expenses and maintenance;
- (iii) The learned Tribunal ought to have applied the multiplier of 16 in accordance with the Second Schedule to the Motor Vehicles Act, instead of the multiplier of 12 applied by it to augment the multiplicand constituting the average loss of dependency of the appellants; and
- (iv) The learned Tribunal awarded a paltry sum of ₹ 15,000/- on account of the loss of consortium and

loss of estate, and no amount whatsoever was awarded towards the loss of love and affection of the deceased and for the funeral expenses of the deceased.

4. Mr. Pankaj Seth, the learned counsel for the respondent No.3- Insurance Company, on the other hand, sought to support the award by contending that the award was a just and fair one and no enhancement of the award amount was called for.

5. Having heard the learned counsel for the parties and gone through the records, including the income-tax assessment returns and the balance-sheets filed by the deceased (Exhibits P1 to P16), which show that there was a marginal increase in the income of the deceased each year from the Assessment Year 1992-93 till the year 1996-97, this Court is not inclined to interfere with the assessment of the income of the deceased. The learned Tribunal after taking into account the future prospects of the deceased assessed the income of the deceased to be in the sum of ₹ 7,500/- per month, relying upon the income-tax return for the year 1996-97 (Exhibit P-5), wherein the

income of the deceased is stated to be ₹ 60,570.34, meaning thereby that the deceased was earning about ₹ 5,000/- per month on the date of his demise. There is no dispute as to the fact that the deceased was about 39 years of age on the date of his death and in view of the fact that the learned Tribunal has assessed the average monthly income of the deceased by adding 50% to his actual income on the date of his death, there is no cogent reason to interfere with the said assessment of the average monthly income of the deceased. The contention of the learned counsel for the appellants that the income-tax returns should not be made the basis for assessing the monthly income of the deceased as the deceased might not have shown his actual income while filing his income-tax returns cannot be countenanced, for, in my view, the income of the deceased must be deemed to be truly reflected in the income-tax returns and there is no warrant for the assertion that his income was not truly reflected in his returns.

6. Adverting to the next contention of the learned counsel for the appellants that a deduction of not more than one-fourth should be made from the average annual income of the deceased for the purpose

of assessing the loss of dependency of his legal representatives, I am inclined to agree with the said contention. The deceased was admittedly survived by 5 legal representatives and in such circumstances, one-third deduction towards his personal expenses would be unjustified. In the case of *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*, the Supreme Court has laid down certain guidelines to ensure uniformity in the awards of all Tribunals and Courts. The guidelines relating to the deduction to be made from the average annual income of the deceased for his personal expenses is reproduced hereunder:-

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, **one-fourth ($1/4^{\text{th}}$) where the number of dependant family members is 4 to 6**, and one-fifth ($1/5^{\text{th}}$) where the number of dependant family members

exceed six.”

7. Deducting one-fourth ($1/4^{\text{th}}$) from the average annual income of the deceased, the average annual loss of dependency of the appellants comes to ₹ 67,500/- per annum ($3/4^{\text{th}}$ of ₹ 90,000/-). It is settled law that this multiplicand must be enhanced by the use of an appropriate multiplier in consonance with the age of the deceased. The appropriate multiplier for the age-group of persons between 36 years to 40 years, in which age group the deceased falls, is the multiplier of 15 as laid by the Supreme Court in the case of *Smt. Sarla Verma (Supra)* instead of the multiplier of 12 applied by the learned Tribunal. Thus calculated, the total loss of dependency of the appellants comes to ₹ 67,500/- per annum X 15 = ₹ 10,12,500/- (Rupees ten lakhs twelve thousand and five hundred only).

8. The only other contention of the learned counsel for the appellants relates to the enhancement of non-pecuniary losses awarded for loss of consortium and loss to the estate of the deceased and the non-award of any non-pecuniary damages towards loss of love and affection and for funeral expenses. I am inclined to modify

the award in this respect by awarding a sum of ₹ 15,000/- towards loss of love and affection, ₹ 10,000/- towards loss of estate, ₹ 10,000/- towards the loss of consortium and ₹ 7,000/- towards funeral expenses and last rites of the deceased. Thus, the total amount of compensation payable to the appellants works out to ₹ 10,54,500/-, which may be rounded off to ₹ 10,55,000/- (Rupees Ten Lac Fifty Five Thousand Only).

9. In view of the aforesaid, the award amount stands enhanced by a sum of ₹ 3,20,000/- with interest thereon @ 7.5% per annum on the amount of the enhanced award. As regards the original award, which is in the sum of ₹ 7,35,000/- as set out above, the Insurance Company shall be liable to pay interest at the rate of 9% per annum as awarded by the learned Tribunal.

10. The Insurance Company shall deposit the award amount as enhanced with the Registrar General of this Court within 30 days from today. The enhanced amount shall enure solely to the benefit of the appellant No.1/the wife of the deceased and shall be released to her.

11. The appeal is allowed in the above terms. Parties shall pay their own costs.

12. Records of the learned Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

**September 26, 2011
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